

## Message Text

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ORIGIN DLOS-09

INFO OCT-01 ARA-10 EUR-12 ISO-00 ACDA-12 AGRE-00  
AID-05 CEA-01 CEQ-01 CG-00 CIAE-00 COME-00  
DODE-00 DOTE-00 EB-08 EPA-01 SOE-02 DOE-15 FMC-01  
TRSE-00 H-01 INR-10 INT-05 IO-13 JUSE-00 L-03  
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FM SECSTATE WASHDC  
TO AMCONSUL SAO PAULO PRIORITY  
INFO AMEMBASSY MOSCOW PRIORITY  
AMEMBASSY BUENOS AIRES

CONFIDENTIAL STATE 183452

PLEASE PASS AMB. ELLIOT RICHARDSON

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: POSSIBLE MARINE SCIENTIFIC RESEARCH AMENDMENTS  
WITH SUGGESTED COMMENTARY

1. THERE FOLLOWS PROPOSED AMENDMENTS TO THE MARINE  
SCIENTIFIC RESEARCH ARTICLES OF THE ICNT. OXMAN HAS  
COPY AND WILL BE PREPARED TO DISCUSS UNDERLYING CONCEPTS  
IN MOSCOW. AT THE SAME TIME THEY ARE BEING CIRCULATED  
FOR INTERAGENCY REVIEW AND COMMENT. FYI: YOU HAVE RE-  
CEIVED ANOTHER LETTER FROM BILL BURKE (UNIVERSITY OF  
WASHINGTON) SPECIFICALLY REFERRING TO THE PUBLICATION  
ISSUE. END FYI.  
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2. ARTICLE 242 BIS. THE APPLICATION OF THIS PART SHALL  
NOT HAVE THE EFFECT OF DENYING A REASONABLE OPPORTUNITY  
TO OBTAIN FROM THE COASTAL STATE, OR WITH ITS COOPERATION,  
INFORMATION NECESSARY TO PREVENT AND CONTROL DAMAGE TO  
THE HEALTH, SAFETY AND ENVIRONMENT OF PERSONS OUTSIDE THE  
JURISDICTION OF THE COASTAL STATE, SUCH AS RESEARCH AND  
MONITORING DATA REGARDING WEATHER, CURRENTS, POLLUTION,

EARTHQUAKES AND OTHER GENERAL PROCESSES AND THEIR CAUSES  
AND EFFECTS.

--COMMENT: INTERNATIONAL LAW IN PRINCIPLE REGULATES THE MANNER IN WHICH A STATE MAY USE AREAS SUBJECT TO ITS JURISDICTION WHEN SUCH USE CAUSES HARM OUTSIDE ITS JURISDICTION. THE SPECIFIC APPLICATION OF THIS GENERAL PRINCIPLE DEPENDS ON THE SUBJECT MATTER. ARTICLE 195, PARAGRAPH 2, IS AN APPLICATION OF THE PRINCIPLE RELEVANT TO POLLUTION. THIS NEW ARTICLE WOULD APPLY THE SAME PRINCIPLE TO MARINE SCIENTIFIC RESEARCH WHERE, FOR EXAMPLE, UNDERSTANDING OF THE MONSOON MAY BE CRITICAL TO THE DEVELOPMENT, AND INDEED THE SURVIVAL, OF MILLIONS.

3. ARTICLE 244 BIS. STATES SHALL ESTABLISH, THROUGH THE COMPETENT INTERNATIONAL ORGANIZATION OR GENERAL DIPLOMATIC CONFERENCE, INTERNATIONAL RULES AND STANDARDS REGARDING CONSENT FOR AND THE CONDUCT OF MARINE SCIENTIFIC RESEARCH PROJECTS OF IMPORTANCE TO THE INTERNATIONAL COMMUNITY AS A WHOLE THAT REQUIRE THE CONSENT OF SEVERAL COASTAL STATES.

--COMMENT: IT MAY NOT BE PRACTICAL TO CONDUCT CERTAIN PROJECTS UNLESS THE CONSENT OF EACH OF SEVERAL COASTAL  
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STATES IS OBTAINED. ONE CAN IMAGINE THAT THE CONDUCT OF A PARTICULAR PROJECT MIGHT BE IMPORTANT TO MANY OF THE COASTAL STATES AS WELL AS THE INTERNATIONAL COMMUNITY AS A WHOLE. THUS, THE NEED TO BALANCE THE INTERESTS OF ANY GIVEN COASTAL STATE WITH THE INTERESTS OF OTHER COASTAL STATES AND THE INTERNATIONAL COMMUNITY IS OBVIOUS. THIS ARTICLE WOULD CALL FOR THE CREATION OF INTERNATIONAL RULES AND STANDARDS REGARDING CONSENT OF THE COASTAL STATE AND THE CONDUCT OF THE RESEARCH BY RESEARCHING STATES.

4. ARTICLE 247. REDRAFT PARAGRAPH 1 AS FOLLOWS:  
"COASTAL STATES HAVE JURISDICTION TO REGULATE, AUTHORIZE AND CONDUCT MARINE SCIENTIFIC RESEARCH IN THEIR EXCLUSIVE ECONOMIC ZONE AND ON THEIR CONTINENTAL SHELF IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF THIS ARTICLE."

-- COMMENT: THE ADDITION OF PARAGRAPH 1 TO THE TEXT CREATES PROBLEMS IN RELATION TO OTHER PROVISIONS. AS DRAFTED, THE CLAUSE ASSUMES THAT GENERAL "JURISDICTION" OVER SCIENTIFIC RESEARCH IS ESTABLISHED ELSEWHERE IN THE CONVENTION. THIS DRAFTING DOES NOT CONFORM TO THE STRUCTURE OF THE BASIC ARTICLE ON THE EXCLUSIVE ECONOMIC ZONE (ICNT ARTICLE 56) WHICH REFERS TO "JURISDICTION AS PROVIDED FOR IN THE RELEVANT PROVISIONS OF THE PRESENT

CONVENTION WITH REGARD TO ... MARINE SCIENTIFIC RESEARCH." WHEN READ ALONGSIDE THE CURRENT DRAFTS OF EITHER ARTICLE

265 OR ARTICLE 296, PARAGRAPH 3, THE USE OF THE TERM "RIGHT" IN ARTICLE 247, PARAGRAPH 1, MAY UNINTENTIONALLY CREATE A TOTAL EXCEPTION FROM DISPUTE SETTLEMENT RATHER THAN THE INTENDED EXCEPTION.

-- ADD A NEW PARAGRAPH 6 "THE ABSENCE OF DIPLOMATIC RELATIONS DOES NOT, IN AND OF ITSELF, JUSTIFY THE CONCLUSION THAT NORMAL CIRCUMSTANCES DO NOT EXIST BETWEEN THE

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RESEARCHING STATE AND THE COASTAL STATE FOR PURPOSE OF APPLYING PARAGRAPH 3 OF THIS ARTICLE."

-- COMMENT: THE ABSENCE OF DIPLOMATIC RELATIONS FOR MANY COUNTRIES IS MORE A MATTER OF FISCAL PRUDENCE THAN AN INDICATION THAT RELATIONS BETWEEN THE COUNTRIES ARE SAD. IN OTHER CASES, THE ESTABLISHMENT OR RESUMPTION OF DIPLOMATIC RELATIONS IS FORESEEN FOR A LATER STAGE IN A DEVELOPING PROCESS WHICH MAY (OR MAY NOT) ALREADY CONSTITUTE "NORMAL CIRCUMSTANCES" FOR PURPOSES OF THIS ARTICLE. THE IMPORTANT POINT IS THAT ABSENCE OF DIPLOMATIC RELATIONS ALONE SHOULD NOT BE THE DETERMINING FACTOR  
-- ALL RELEVANT FACTORS SHOULD BE CONSIDERED.

5. ARTICLE 250. MODIFY PARAGRAPH 1(D) AS FOLLOWS: "IF REQUESTED, PROVIDE THE COASTAL STATE WITH AN ASSESSMENT OF SUCH DATA AND SAMPLES AND THE RESULT THEREOF...."

--COMMENT: THIS AMENDMENT IS INTENDED TO CLARIFY THE NATURE OF THE RESEARCHING STATES. OBLIGATION TO THE COASTAL STATE.

--REDRAFT PARAGRAPH 2 AS FOLLOWS: "THE COASTAL STATE, IF IT DECIDES TO GRANT CONSENT UNDER ARTICLE 247 FOR A PROJECT OF DIRECT SIGNIFICANCE FOR THE EXPLORATION AND EXPLOITATION OF NATURAL RESOURCES, MAY REQUIRE PRIOR AGREEMENT ON WHEN IT WILL BE FEASIBLE TO MAKE THE RESEARCH RESULTS INTERNATIONALLY AVAILABLE. IN THE ABSENCE OF EXCEPTIONAL CIRCUMSTANCES, SUCH AGREEMENT SHALL NOT PROVIDE FOR A DELAY OF MORE THAN SIX MONTHS."

--COMMENT: AS INDICATED IN PARAGRAPH 1(E) OF ARTICLE 250, THE PURPOSE OF ADDING A PARAGRAPH 2 TO THIS CONFIDENTIAL

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ARTICLE WAS TO FIND SOME MEANS TO REACH AN ACCOMMODATION ON THE QUESTION OF DEALING WITH RESEARCH RESULTS FROM NATURAL RESOURCE PROJECTS. THIS IS NOT ACHIEVED IN A READILY COMPREHENSIVE MANNER. SOME COASTAL STATES HAVE EXPRESSED THE DESIRE TO HAVE THE OPPORTUNITY TO RE-

VIEW AND CONSIDER SUCH RESULTS BEFORE THEY ARE GENERALLY

KNOWN. THE AMENDMENT WOULD ADDRESS THE ISSUE DIRECTLY. IT WOULD NOT ENCOURAGE COASTAL STATES TO SUPPRESS INTERNATIONAL DISTRIBUTION OF SCIENTIFIC RESEARCH RESULTS, BUT WOULD GIVE THEM THE LEGAL RIGHT BEFORE CONSENTING TO PROJECTS TO SECURE AGREEMENT ON WHEN IT WILL BE FEASIBLE, FROM THE COASTAL STATE'S POINT OF VIEW AS WELL AS THE SCIENTISTS., TO MAKE INTERNATIONALLY AVAILABLE THE RESULTS OF RESOURCE RESEARCH PROJECTS THAT ARE SUBJECT TO THE DISCRETIONARY CONSENT POWER OF THE COASTAL STATE UNDER ARTICLE 247 (4)(A). SINCE THE NECESSARY DELAY MAY VARY FROM PROJECT TO PROJECT, THIS APPROACH WOULD BEST ENSURE THAT NEITHER UNDUE HASTE NOR UNDUE DELAY OCCURS IN THE PARTICULAR SITUATION.

6. ARTICLE 253. BEFORE THE CLAUSE "UNLESS WITHIN FOUR MONTHS..." ADD, BETWEEN COMMAS, THE WORDS "AND CONSENT SHALL BE DEEMED TO HAVE BEEN GRANTED."

-- COMMENT: TECHNICAL CONFORMITY BETWEEN ARTICLE 247(2) AND 253.

7. ARTICLE 254. CHAPEAU -- REDRAFT AS FOLLOWS: THE COASTAL STATE SHALL HAVE THE RIGHT, WHERE IT HAS BEEN UNABLE TO SECURE COMPLIANCE BY OTHER MEANS WITHIN A REASONABLE PERIOD OF TIME, TO REQUIRE THE CESSATION OF ANY RESEARCH ACTIVITIES IN PROGRESS WITHIN ITS EXCLUSIVE ECONOMIC ZONE OR ON ITS CONTINENTAL SHELF IF:

--PARAGRAPH B - DELETE "AND COMPLIANCE IS NOT SECURED  
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WITHIN A REASONABLE PERIOD OF TIME."

--COMMENT: THE PRINCIPLE CURRENTLY IN SUBPARAGRAPH (B) TO THE EFFECT THAT SUSPENSION OF A PROJECT ALREADY UNDER WAY SHOULD ONLY OCCUR IF COMPLIANCE CANNOT BE SECURED BY OTHER MEANS IN A REASONABLE TIME, IS ACTUALLY APPLICABLE TO BOTH SUBPARAGRAPHS.

--PARAGRAPH A - DELETE "INITIALLY."

--COMMENT: THE PRINCIPLE INVOLVED IS THAT THE PROJECT DESCRIBED AND CONSENTED TO IS THE PROJECT BEING CONDUCTED. ACCORDINGLY, THE PROJECT SHOULD CONFORM TO ALL INFORMATION COMMUNICATED UNDER ARTICLE 249, NOT MERELY THAT INITIALLY COMMUNICATED.

8. ARTICLE 256. DELETE "AND UNIFORMLY APPLIED."

--COMMENT: THIS ARTICLE SPECIFICALLY APPLIES INTER ALIA

TO BILATERAL OR REGIONAL ARRANGEMENTS. ACCORDINGLY, THE

REQUIREMENT THAT RULES AND REGULATIONS AND ADMINISTRATIVE PROCEDURES BE "UNIFORMLY APPLIED" IS UNCLEAR. WHAT IS THE RELATIONSHIP TO ARTICLE 247?

9. ARTICLE 258. CHANGE THE TERM "WATER COLUMN" TO "HIGH SEAS."

-- COMMENT: ACCURACY (SEE ICNT ARTICLE 87.)

10. ARTICLE 265. SEE NOTE TO PROPOSAL REGARDING ARTICLE 296 (3)(A).

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11. ARTICLE 296, PARAGRAPH 3(A)

(NOTE: ON THE BASIS OF THE STATEMENT BY THE CHAIRMAN OF THE THIRD COMMITTEE, IT IS ASSUMED THAT ARTICLE 265 WOULD BE REMOVED, AS THE SUBJECT IS TO BE DEALT WITH IN THE CONTEXT OF NEGOTIATIONS ON PART XV OF THE ICNT, IN PARTICULAR PARAGRAPH 3(A) OF ARTICLE 296.)

--1. DELETE THE WORDS "A RIGHT OR" AND ADD THE PHRASE "TO WITHHOLD CONSENT" AFTER THE WORD "DISCRETION."

--2. DELETE THE WORDS "AND 254" AND THE CLAUSE "OR A DECISION TAKEN IN ACCORDANCE WITH ARTICLE 254."

-- COMMENT:

--1. PARTICULARLY IN VIEW OF THE DRAFTING OF ARTICLE 247(1) THIS CORRECTION IS NECESSARY TO GIVE THE EXCLUSION OF DISPUTE SETTLEMENT ITS INTENDED SCOPE. SEE COMMENT ON ARTICLE 247(1).

--2. ARTICLE 254 PERMITS THE COASTAL STATE TO STOP A PROJECT "IN PROGRESS" THAT WAS COMMENCED WITH ITS CONSENT UNDER THE TREATY. SUCH A DECISION SHOULD BE DISTINGUISHED FROM THE EXERCISE OF DISCRETION TO DENY CONSENT BEFORE THE PROJECT BEGINS. IN SOME CASES THE LOSS OF SCIENTIFIC KNOWLEDGE MIGHT BE THE SAME, BUT THE ECONOMIC COSTS OF AND LOSS OF VALUABLE TIME IN TRAINED PERSONNEL AND SPECIALIZED EQUIPMENT ARE QUITE DIFFERENT. COASTAL STATE AUTHORITY UNDER ARTICLE 254 IS ONEROUS. FOR PRACTICAL PURPOSES ITS EXERCISE, WHETHER OR NOT LAWFUL, MAY END A PARTICULAR PROJECT. THEREFORE, IT IS BOTH UNNECESSARY AND INAPPROPRIATE TO EXCLUDE SUCH A DECISION FROM DISPUTE SETTLEMENT PROCEDURES. CHRISTOPHER

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DRAFTED BY:D/LOS:RBLUMBERG  
APPROVED BY:ROBERT BLUMBERG D/LOS  
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TO USMISSION USUN NEW YORK PRIORITY  
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AMEMBASSY THE HAGUE PRIORITY  
AMEMBASSY WELLINGTON PRIORITY  
AMEMBASSY QUITO PRIORITY  
INFO AMEMBASSY SOFIA  
AMEMBASSY OTTAWA  
AMEMBASSY BERN  
AMEMBASSY SINGAPORE

C O N F I D E N T I A L STATE 183452

FOLLOWING REPEAT STATE 183452 ACTION SAO PAULO INFO  
MOSCOW BUENOS AIRES JUL 20.

QUOTE: C O N F I D E N T I A L STATE 183452

PLEASE PASS AMB. ELLIOT RICHARDSON

E.O. 11652: GDS

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--COMMENT: INTERNATIONAL LAW IN PRINCIPLE REGULATES THE MANNER IN WHICH A STATE MAY USE AREAS SUBJECT TO ITS JURISDICTION WHEN SUCH USE CAUSES HARM OUTSIDE ITS JURISDICTION. THE SPECIFIC APPLICATION OF THIS GENERAL PRINCIPLE DEPENDS ON THE SUBJECT MATTER. ARTICLE 195, PARAGRAPH 2, IS AN APPLICATION OF THE PRINCIPLE RELEVANT TO POLLUTION. THIS NEW ARTICLE WOULD APPLY THE SAME PRINCIPLE TO MARINE SCIENTIFIC RESEARCH WHERE, FOR EXAMPLE, UNDERSTANDING OF THE MONSOON MAY BE CRITICAL TO THE DEVELOPMENT, AND INDEED THE SURVIVAL, OF MILLIONS.

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--COMMENT: THIS AMENDMENT IS INTENDED TO CLARIFY THE  
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--COMMENT: AS INDICATED IN PARAGRAPH 1(E) OF ARTICLE 250, THE PURPOSE OF ADDING A PARAGRAPH 2 TO THIS ARTICLE WAS TO FIND SOME MEANS TO REACH AN ACCOMMODATION ON THE QUESTION OF DEALING WITH RESEARCH RESULTS FROM NATURAL RESOURCE PROJECTS. THIS IS NOT ACHIEVED IN A READILY COMPREHENSIVE MANNER. SOME COASTAL STATES HAVE EXPRESSED THE DESIRE TO HAVE THE OPPORTUNITY TO REVIEW AND CONSIDER SUCH RESULTS BEFORE THEY ARE GENERALLY

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8. ARTICLE 256. DELETE "AND UNIFORMLY APPLIED."

--COMMENT: THIS ARTICLE SPECIFICALLY APPLIES INTER ALIA TO BILATERAL OR REGIONAL ARRANGEMENTS. ACCORDINGLY, THE REQUIREMENT THAT RULES AND REGULATIONS AND ADMINISTRATIVE PROCEDURES BE "UNIFORMLY APPLIED" IS UNCLEAR. WHAT IS CONFIDENTIAL

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THE RELATIONSHIP TO ARTICLE 247?

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-- COMMENT: ACCURACY (SEE ICNT ARTICLE 87.)

10. ARTICLE 265. SEE NOTE TO PROPOSAL REGARDING ARTICLE 296 (3)(A).

11. ARTICLE 296, PARAGRAPH 3(A)

(NOTE: ON THE BASIS OF THE STATEMENT BY THE CHAIRMAN OF THE THIRD COMMITTEE, IT IS ASSUMED THAT ARTICLE 265 WOULD BE REMOVED, AS THE SUBJECT IS TO BE DEALT WITH IN THE CONTEXT OF NEGOTIATIONS ON PART XV OF THE ICNT, IN PARTICULAR PARAGRAPH 3(A) OF ARTICLE 296.)

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UNQUOTE VANCE

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## Message Attributes

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**Concepts:** RESEARCH, AMENDMENTS  
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**Copy:** SINGLE  
**Draft Date:** 20 jul 1978  
**Decaption Date:** 01 jan 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 20 Mar 2014  
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**Disposition History:** n/a  
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**Drafter:** D/LOS:RBLUMBERG/AD  
**Enclosure:** n/a  
**Executive Order:** 11652 GDS  
**Errors:** n/a  
**Expiration:**  
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**From:** STATE  
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**Office:** ORIGIN DLOS  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 11  
**Previous Channel Indicators:**  
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**Previous Handling Restrictions:** n/a  
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**Review Action:** RELEASED, APPROVED  
**Review Content Flags:** ANOMALY  
**Review Date:** 06 may 2005  
**Review Event:**  
**Review Exemptions:** n/a  
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**Review Release Event:** n/a  
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**SAS ID:** 1857537  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** POSSIBLE MARINE SCIENTIFIC RESEARCH AMENDMENTS WITH SUGGESTED COMMENTARY  
**TAGS:** PLOS  
**To:** SAO PAULO INFO MOSCOW MULTIPLE  
**Type:** TE  
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**Review Markings:**  
Sheryl P. Walter  
Declassified/Released  
US Department of State  
EO Systematic Review  
20 Mar 2014  
**Markings:** Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014